IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE JURISDICTION

Civil Application No. 3247 of 2004
in
First Appeal No. 983 of l988
Barkatali Abdul Razak Kazi & ors.. petitioners
vs
Sonubai @ Aminabai Bhara Yusufsaheb Kazi
since deceased by LRs ..Respondents

Mr.Suresh More for petitioners
Mr.G.R.Rege with Mr.S.M.Railkar for respondent no.l
Smt G.P.Mulekar AGP for State

CORAM: A.P.SHAH & S.J.VAZIFDAR JJ.

Dated l7.l.2005

P.C:

. This is an application for recalling the judgement and order passed by the Division Bench of this court on l6.3.2000 in First Appeal No. 983 of l988. The appeal was filed by one Sonubai @ Aminabai Bhara Yusufsaheb Kazi who died on 29.l.l996 during the pendency of the appeal. After the death of Sonubai respondent no.l(a) was brought on record as the only heir on the basis of the gift deed dated 30.9.l995. The appeal was allowed and the amount of compensation was enhanced and the enhanced compensation has already been paid over to respondent no.l(a).

2. The petitioners claim that the deceased had only one son by name Abdul Razak and she had willed

away the entire property in favour of said Abdul Razak under a Will dated l.7.l995 which is a registered Will. The petitioners claim that the gift deed set up by the respondent no.l(a) is a bogus and fabricated document and the respondent no.l(a) has practiced fraud on this court. The application was opposed by the respondent no.l(a) by filing affidavit in reply. The respondent no.l(a) claim that he is the legal representative of the deceased Sonubai @ Aminabai on the basis of the gift deed executed by her in his favour on 30.9.l995 under which she had gifted her l/3rd share which accrued to her on the death of her father. It is contended that the learned Civil Judge,Senior Division, Panvel has granted heirship certificate dated l.l.2003 in favour of the respondent no.l(a).

3. Having considered the rival contentions we are of the opinion that no relief can be granted to the petitioners in the present civil application. The The question whether the gift deed was a valid document will have to be decided by a competent civil court. The petitioners are free to adopt appropriate remedy for establishing their rights in respect of Sonubai’s l/3rd share in the suit property.Civil application is rejected with liberty

to the petitioners to adopt appropriate remedy in accordance with law.